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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,042	09/29/2003	Scott R. Zearbaugh	13DV-12975-3	2582

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,042

Applicant(s)

ZEARBAUGH, SCOTT R.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3634

DETAILED ACTION

This non-final Office action is in response to the application and preliminary amendment filed September 29, 2003, by which claims 1-3 were amended, claims 4-19 were canceled, and claims 20-22 were added.

Claim Objections

Claim 20 is objected to because a --- (period) should be placed at the end of line 3. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the second strap clamp" in the last line. There is insufficient antecedent basis for this limitation in the claim.

The term "thicker" in claim 1 (see line 7) is a relative term which renders the claim indefinite. The term "thicker" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Art Unit: 3634

Claims 21 and 22 are rendered indefinite by the language "second strap clamp" since it is unclear whether this second strap clamp is the same second strap clamp set forth in the last line of claim 1. *Thus*, the metes and bounds of the claim cannot be properly ascertained since it is unclear whether one or two second strap clamps are being required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 622,739 (Wahlert '739).

Wahlert '739 discloses the structure of a clamping assembly comprising a first strap clamp (B) which includes a first portion (at both 6's in Figure 4) and a thicker second portion (5) that extends unitarily from the first portion (6, 6) such that the width (between B and 5 in Figure 4 is defined as the width) of the clamping assembly is substantially constant therethrough and such that a lower surface (shown at 6 in Figure 1) of the first portion (6, 6) is substantially coplanar with a lower surface of the second portion (5); a second strap clamp (1) is also provided which is *substantially* rectangular (when viewed in plan); the first strap clamp (6, 6) has a plurality of openings (at 3) that are substantially aligned with a plurality of openings (3) defined in the second strap clamp (1); at least two threaded fasteners, i.e., bolts (see line 50) are inserted through the openings (3) in the first and second strap clamps; the first strap clamp (B) is secured

Art Unit: 3634

to the bottom of a car (see line 25) and the second strap clamp (1) is placed around a pipe, i.e., tube and secured to the first strap clamp (see Figure 1) by bolts fastened through the apertures (3); and the tube is secured against only (see Figure 2) the second portion (5) of the first strap clamp (B).

The claims differ from Wahlert '739 in requiring: (a) the method step of securing the first strap clamp to an engine housing (claim 1); (b) *bending* the second strap clamp around the tube (claim 2); and (c) using a *stainless steel* second strap clamp (claim 3).

With respect to (a), although Wahlert '739 does not explicitly state that the clamping assembling is secured to an *engine housing*, Wahlert '739 does disclose use with the bottom of a car. *Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have secured the first strap clamp to an *engine housing*, as called for in the claims, for increased storage capacity and capabilities of the assembly.

With respect to (b), although Wahlert '739 does not disclose the method step of *bending* the second strap clamp, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the second strap clamp could be bent around the tube, thereby allowing for ease in assembly and use.

With respect to (c), although Wahlert '739 is silent as to the material from which the second strap clamp is fabricated from, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have made the clamp from stainless steel, as required by the claim, for ease in economy and manufacture.

Art Unit: 3634


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

Please note, that due to the relocation of the U.S. Patent and Trademark Office from Arlington to Alexandria, Virginia, the Examiner's phone number will be changed. After April 7, 2005, please contact the Examiner at (571) 272-6832.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
March 15, 2005